



Daniel J. Whyte
Special Assistant Attorney General
Chief Legal Counsel, Secretary of State
Room 225 Capitol
P.O. Box 202801
Helena, MT 59620-2801

EXHIBIT

DATE

1/30/99

FILED
CLERK

FEB 26 10 11 AM '99

FILED
BY *[Signature]*

MONTANA FIRST JUDICIAL DISTRICT COURT, LEWIS AND CLARK COUNTY

MONTANA ENVIRONMENTAL
INFORMATION CENTER

Plaintiff,

-vs-

MONTANA SECRETARY OF STATE
MIKE COONEY

Defendant.

CAUSE NO. CDV 9800097

STIPULATION

INDEXED

COME NOW, the parties, Montana Environmental Information Center (MEIC) and
Secretary of State Mike Cooney (Secretary of State), and stipulate to the following:

On February 13, 1998 MEIC brought before the First Judicial District Court an
APPLICATION FOR WRIT OF MANDAMUS AND COMPLAINT, asking the Court: 1) For
an alternative writ of mandate requiring the Secretary of State to immediately disclose special
session ballots; 2) for a peremptory writ of mandate requiring the Secretary of State to
immediately disclose the special session ballots; 3) in the alternative, for a declaratory judgment
that the Secretary of State is required to disclose the special session ballots; 4) for a declaratory
judgment that § 5-3-106(2), MCA is unconstitutional under Article II, § 9 and Article V, § 10(3)

of the Montana Constitution; and 5) for costs and attorney fees.

The parties met on February 13, 1998. At that time, the Court signed an alternative writ ordering the Secretary of State to open the ballots, or in the alternative, appear to show cause why he has not done so. February 26, 1998, was set as a date for the show cause hearing.

Section 5-3-105, MCA requires that before a special session may be convened, at least ten legislators must request that the Secretary of State poll the legislators to determine whether they favor calling a special session. Section 5-3-106, MCA provides that if the requirements of 5-3-105 are met, the Secretary of State shall mail ballots by certified mail polling the legislature for the need of a special session. Section 5-3-106(2) requires that the Secretary of State keep the ballots secret until all legislators have voted or until the day after the date set for return of the ballots, whichever occurs first.

MEIC requested in person and in writing that Secretary of State Cooney release the ballots on the basis that § 5-3-106(2) is in contravention to the public's right to know under Article II, § 9, and the requirements that the legislature's sessions and hearings are to be open to the public under Article V, § 10(3) of the Montana Constitution. Following the statutory provision prohibiting release of the ballots, the Secretary of State, while recognizing the public's right to know, refused to release the ballots for examination.

The Secretary of State has since conducted an in-depth review of the issue of whether the special session ballots are constitutionally protected from public examination. Secretary Cooney has also reviewed this issue with Attorney General Joseph P. Mazurek and with Gregory J. Petesch, Director of the Legal Services Office of the Legislative Services Division. After careful review, it is determined that there is no defensible constitutionally protected right to keep the

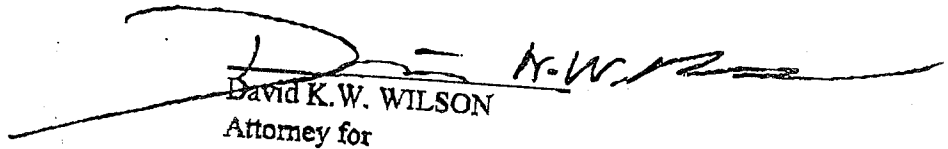
special session ballots secret. The State concedes that Montana Code Annotated 5-3-106(2) is invalid under Article II, § 9 of the Montana Constitution, and the Secretary of State, upon order of the Court, will permit public review of these ballots once received by him.

There is however, an interest in protecting ballot measures and election processes in general, that are otherwise constitutionally protected. Cf. MONT. CONST. Art. IV, § 1. The Secretary of State and MEIC stipulate that the concession that § 5-3-106(2) is unconstitutional is limited to the operation of that statute and is not intended to affect any other ballot or election processes not controlled by § 5-3-106(2), MCA.

The issue of whether or not attorney fees should be awarded, pursuant to § 2-3-121 or § 27-26-402, MCA, is reserved at this time to be determined in the future by the Court or by agreement of the parties.


Relying on this STIPULATION, the parties urge the Court to: 1) issue an order finding that § 5-3-106(2), MCA is unconstitutional; 2) order the Secretary of State to permit review of the special session ballots; and 3) to dismiss the APPLICATION FOR WRIT OF MANDATE AND COMPLAINT.

DATED this 26th day of FEBRUARY, 1998.



David K.W. WILSON

Attorney for
Montana Environmental Information Center



DANIEL J. WHYTE

Chief Legal Counsel, Secretary of State

HARCY S. SUTTER
CLERK OF DISTRICT COURT

Feb 26 10 31 AM '99

MONTANA FIRST JUDICIAL DISTRICT COURT
LEWIS AND CLARK COUNTYMONTANA ENVIRONMENTAL
INFORMATION CENTER

Plaintiff,

-vs-

MONTANA SECRETARY OF STATE
MIKE COONEY

Defendant.

CAUSE NO. CDV 9800097

ORDER

INDEXED

This action was brought before the Court as an APPLICATION FOR WRIT OF MANDAMUS AND COMPLAINT by Plaintiff Montana Environmental Information Center asking: 1) For an alternative writ of mandate requiring the Secretary of State to immediately disclose special session ballots; 2) for a peremptory writ of mandate requiring the Secretary of State to immediately disclose the special session ballots; 3) in the alternative, for a declaratory judgment that the Secretary of State is required to disclose the special session ballots; 4) for a declaratory judgment that § 5-3-106(2), MCA is unconstitutional under Article II, § 9 and Article V, § 10(3) of the Montana Constitution; and 5) for costs and attorney fees.

It was ordered by ALTERNATIVE WRIT OF MANDATE on February 13, 1998 that

Defendant Secretary of State immediately disclose the special session ballots, or in the alternative appear before this Court on February 26, 1998 to show cause why, if any, his office had not done as directed in the writ.

At the February 26, 1998 hearing the parties presented to the Court a stipulation wherein:

- 1) the Secretary of State conceded that there is no constitutionally defensible argument that can be made in favor of § 5-3-106(2), MCA, and the parties requested that this Court find it unconstitutional; 2) that the concession that § 5-3-106(2) is unconstitutional is limited to the operation of that statute; and 3) upon order of the Court, the Secretary of State would allow examination of the special session ballots.

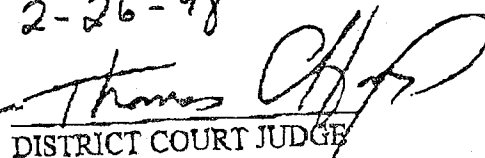
IT IS HEREBY ORDERED, that § 5-3-106(2), MCA is unconstitutional. As a result, the Secretary of State is ordered to release for examination by the public the special session ballots received by him.

IT IS FURTHER ORDERED, that the finding that § 5-3-106(2) is unconstitutional is limited to the operation of that statute and is not intended to affect any other ballot or election processes not controlled by § 5-3-106(2), MCA.

The issue of whether or not attorney fees should be awarded, pursuant to §§ 2-3-121 or 27-26-402, MCA, is reserved at this time to be determined in the future by this Court if not by agreement of the parties.

The APPLICATION FOR WRIT OF MANDATE AND COMPLAINT are dismissed.

2-26-98


DISTRICT COURT JUDGE